

EXHIBIT 2

Foster, Richard P.

HIGHLY CONFIDENTIAL
Philadelphia, PA

February 20, 2008

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 03-CV-11865-PBS

- - - - - x
THE COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff,)
-against-)
MYLAN LABORATORIES, INC., et al.,)
Defendants.)

- - - - - x

(Caption continued on next page)

Highly Confidential Videotaped Deposition
of RICHARD P. FOSTER was taken, pursuant to
notice, held at the Westin Hotel, 99 S. 19th
Street, Philadelphia, Pennsylvania on
Wednesday, February 20, 2008, beginning at or
about 9:37 a.m., before Debra J. Veneziale,
Court Reporter and Notary Public and Richard
Kanzinger, Jr., Videotape Operator.

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1 the case may be, and you couldn't be more than
2 one standard deviation away from any of the other
3 generic SWPs.

4 Q. So, tell me if I'm understanding you
5 correctly, one of the requirements that you
6 understood -- this was in order to get FDB
7 designation of your product as a generic product;
8 is that right?

9 A. This was for us to get listed on their
10 database at all. There was some generic products
11 that we marketed that were called brands by First
12 DataBank.

13 Q. Okay.
14 You could get listed if you -- as long
15 as you reported an AWP price, right?

16 A. As long as you reported a number of
17 characteristics along with AWP and a WAC.

18 Q. Right.
19 But in order to -- is it fair, is it
20 accurate to say that your understanding while you
21 were at TEVA was that one of the criteria that
22 First DataBank would look at was the AWP price

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1 adjust it. The one instance where I remember
2 where we would have to adjust it was Enalapril.
3 That's the generic version of Vasotec. There
4 were 11 competitors who sold the product. We set
5 our AWP and set our WAC, and then -- I think we
6 were 11. It might have been a little more, a
7 little less, it was something in that range, and
8 then when we launched the product the brand price
9 -- the brand WAC, if I remember correctly, was in
10 the \$220 range per 100. We wind up selling it
11 for less than \$2. So, we would eventually have
12 to drop our WAC price down. I don't remember how
13 far we dropped it, but we dropped it
14 significantly.

15 Q. All right.

16 And the WAC price, was that an invoice
17 price to the wholesalers?

18 A. Are you speaking in terms of me at TEVA
19 or my general of the knowledge of the
20 marketplace?

21 Q. Well, let's focus first at TEVA.

22 A. No problem. The WAC price is what the

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1 **wholesalers would essentially buy the product**
2 **for. They would be discounts that would happen**
3 **after the fact.**

4 Q. So, that the product when it was
5 shipped to a wholesaler would be invoiced at the
6 WAC price?

7 A. As far as I recall, while I was at
8 TEVA, yes.

9 Q. All right.

10 And then depending upon the
11 circumstances with the wholesaler there might be
12 discounts, rebates, chargebacks, other price
13 concessions that might get credited after those
14 invoices had been sent?

15 A. That is correct.

16 Q. I think you said that using the example
17 that if the brand AWP was at 100 on a new launch
18 the TEVA generic AWP would be set around 89, and
19 you said that if there was another generic
20 manufacturer you might set the generic AWP at a
21 lower level, that would be the deal with the one
22 standard deviation?

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1 **A. The one standard deviation issue.**

2 **Q. Okay.**

3 And I think you said that with regard
4 to the WAC you would -- if you were exclusive
5 kind of the rule of thumb would be to set the WAC
6 at 20 percent below the generic AWP, SWP that you
7 had set?

8 **A. That is correct.**

9 **Q. Okay.**

10 And is it fair to say that as a general
11 rule that you wanted to have the WAC higher than
12 any contract prices that you had?

13 **A. As a general rule, yes.**

14 **Q. And why was that?**

15 **A. Because there would be a chargeback**
16 **relationship that will occur at the wholesaler**
17 **level. And you have to understand wholesalers**
18 **have lots of different customers. And if our --**
19 **and using the example that we have there, can I**
20 **just round the number to 90 to make my life**
21 **simple?**

22 **Q. Sure.**

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1 delete obsolete products, if there had been
2 changes in pricing change it and then send it
3 back to them?

4 Q. Prior to me arriving at TEVA they
5 recently bought a couple of companies so I think
6 there was some cleanup process that had to
7 happen. In other words, you may have a TEVA
8 product and a Copley product and a Novopharm
9 product that was there and maybe these two are no
10 longer being sold to Copley and Novopharm and is
11 the TEVA one the right one that's out there.

12 And so you would have to confirm the
13 NDC number, the imprints, the SWP, AWP and the
14 WAC price.

15 Q. Okay.

16 And is it your recollection that it was
17 those kinds of circumstances, but not a general
18 every quarter or once a year that you got some
19 kind of turnaround document from First DataBank?

20 **A. I'm sorry, say again, please.**

21 Q. Is it your understanding that documents
22 from First DataBank to TEVA asking you to verify

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1 or confirm the information that First DataBank
2 was reporting related only to the situation where
3 you would acquire some companies and they were
4 kind of cleaning up whether --

5 **A. I just remember the activity.**

6 Q. You don't recall a regular every year
7 or every quarter turnaround?

8 **A. Not off the top of my head, but again**
9 **we're talking six to eight years ago so I may be**
10 **mistaken.**

11 Q. Okay.

12 MR. MULLIN: I've got about 12:15. Is
13 this an appropriate place to take a lunch recess?

14 MS. LEVY: Sure.

15 VIDEOTAPE OPERATOR: Off the video, the
16 time is 12:20.

17 (Whereupon, a short break was
18 taken at this time.)

19 VIDEOTAPE OPERATOR: We're back on the
20 record, the time is 1:25.

21 BY MR. MULLIN:

22 Q. Mr. Foster, I think you told us this

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1 Q. And you say: I will be forwarding you
2 an e-mail from Tom that says Geneva is launching
3 at a higher AWP. Can we check First DataBank and
4 see if they are rated as a brand or a generic.
5 If they are rated as a generic it would be
6 prudent to match competition.

7 Is it fair, is it accurate to say that
8 throughout the time period when you were employed
9 at TEVA, 2000 to 2002, that the policy was to
10 match competitor's AWP's so long as you could
11 maintain your generic designation?

12 A. Well, here's the issue. This is a
13 supply issue. Example on Enalapril, I only had
14 so many units to be able to supply the
15 marketplace. If I was the only generic that was
16 out there I could not supply the entire
17 marketplace. This product had multiple
18 competitors. I didn't have enough share to sell
19 100 percent of the marketplace.

20 So, if I am the only one that's a
21 generic, as I understood that, that happened in
22 this particular case as I brought up earlier that

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1 Enalapril was an example where the price fell
2 very quickly, therefore I'd have to turn because
3 of the one standard deviation rule, to match
4 that.

5 Or this might have been the case where
6 there were other people that were lower and some
7 were higher and I was trying to get to a place
8 where I would be within a one standard deviation.

9 Q. Certainly you instructed Gene and Gene
10 had Calculated numerous AWP's and WAC in the past,
11 right, prior to working on the drug Enalapril?

12 A. Uh-hum.

13 Q. Right?

14 A. Yes.

15 Q. And he understood how to do that and
16 communicate prices to First DataBank and get
17 First DataBank between generic designation,
18 right?

19 A. Well, the reason why Gene wasn't
20 responsible for calculating these because Gene
21 got it wrong a lot. Okay. And so once I came on
22 board after a short of period I became

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1 And if Geneva had a higher AWP than
2 TEVA any third party payers who used AWP as the
3 basis for reimbursement would be reimbursing more
4 for the Geneva product than for the TEVA product;
5 correct?

6 A. My issue was not reimbursement.

7 Q. I'd ask you to focus on my question and
8 answer that question, whether that's true.

9 A. I'm sorry, you're trying to twist me
10 around to something and I would to state
11 something for the record if you don't mind.

12 Q. You may.

13 A. What I'm saying here is that here on
14 this launch, as I recall, there were some
15 problems with some low AWPs and some high AWPs.
16 Okay. What happened was the one standard
17 deviation of First DataBank ran into a problem
18 and I was trying to find a place where we could
19 be set as a generic and be the only generic, and
20 that's what I was trying to do in this situation.

21 Q. When you sent this e-mail to Mr.
22 Cioschi did you say anything about there being

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1 any lower AWP's by generics?

2 A. That's why I can we check with First
3 DataBank if they're rated a brand or a generic.
4 I'm implying, because I'm in the industry, that
5 that would be checking to see whether there are
6 other ones that are brand or generic.

7 Q. The they that you're referring to on
8 the second line is Genova; correct?

9 A. Uh-hum. That was one of the they. He
10 we have multiple competitors on the product.
11 What Gene would have done he would have gotten me
12 the whole First DataBank and we would have looked
13 at the whole First DataBank list.

14 Q. At this time there are already some
15 existing generic competitors with regard to this
16 drug?

17 A. As I understand it, this launched about
18 that period of time.

19 Q. So that were already some existing
20 generic manufacturers who were selling this drug?

21 A. I think this was within a day or two of
22 the product launching. So, are there existing

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1 think you said that in connection with a launch
2 of a new product that the company I believe you
3 said if it was exclusive it would set its WAC at
4 20 percent of its suggested wholesale price; is
5 that right?

6 **A. Yes.**

7 Q. What if you weren't exclusive, what was
8 the policy with regard to setting WAC?

9 **A. I don't believe we had a written**
10 **policy.**

11 Q. Was there any rule of thumb, guideline
12 that you used?

13 **A. Nothing in particular, as noted in one**
14 **of your things that showed the Enalapril WAC. I**
15 **think that the Buspirone I guess it is, Foster-3.**

16 Q. And what's the percentage there?

17 **A. The percentage discount there looks**
18 **like -- I can't do the math in my head anymore,**
19 **\$28.91 versus \$201.91 on the 15 milligrams 100s.**
20 **So, 29 versus 202.**

21 Q. So, it's approximately 10, 15 percent,
22 the WAC? I think we have a calculator.

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1 **A. Thanks. That saves me a headache.**

2 **14.3. Thank you for your help.**

3 **Q. So, it could be -- it's a 14.3 discount**
4 **off of --**

5 **A. No. 14.3 percent of the SWP.**

6 **Q. So, it would be 85 point something?**

7 **A. Yes, something like that. Yes.**

8 **Q. And in December -- that's a pretty**
9 **broad range, from 20 percent up to as much as 85**
10 **percent?**

11 **A. I believe we have some that are higher.**

12 **Q. Okay.**

13 And what would be the factors or the
14 criteria that you would consider in deciding
15 where within that range to set the WAC price?

16 **A. How many competitors are there, how low**
17 **is my AWP cost, how low is my lower manufacturing**
18 **costs, what are my discounts that I have to give**
19 **off WAC so I can understand what those numbers**
20 **would be. Those would all factor into my**
21 **calculation.**

22 **Q. And is it fair, is it accurate to say**